

**AGENDA MEMO**

**CITY COUNCIL MEETING DATE: APRIL 18, 2007**

**DEPARTMENT: PLANNING AND DEVELOPMENT**

**ITEM DESCRIPTION: VAR-20139 - APPLICANT/OWNER: A & A, INC.**

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**\*\* CONDITIONS \*\***

Staff recommends DENIAL. The Planning Commission (6-1/sd vote) recommends APPROVAL, subject to:

**Planning and Development**

1. Approval of and conformance to the Conditions of Approval for Rezoning (ZON-19616), and Site Development Plan Review (SDR-19614) shall be required.
2. This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

**\*\* STAFF REPORT \*\***

**PROJECT DESCRIPTION**

This application is a request for a Variance to allow a proposed 11 parking spaces where 72 parking spaces are required at 401-403 South Sixth Street. A previous approval (V-0078-78) included a variance to allow the restaurant in an R-4 (High Density Residential) zone. Two concurrent applications will be considered along with this item: a site development plan review (SDR-19614) to allow the addition of 342 square feet to the existing restaurant and a rezoning (ZON-19616) to rezone the site to a C-1 (Limited Commercial) zone so that the existing use will be in conformance with the current zoning requirements.

The applicant indicates a wish to upgrade the site of the existing restaurant use by removing the temporary storage unit currently on site and making the requested permanent additions to deal with the restaurant's storage needs. Further, it is the applicant's intention to upgrade the entry landscaping and resurface areas of the on-site parking. Due to the extent of the requested variance, denial of this request is recommended.

**BACKGROUND INFORMATION**

<b><i>Related Relevant City Actions by P&amp;D, Fire, Bldg., etc.</i></b>	
10/26/78	The Board of Zoning Adjustment approved a Variance (V-0078-78) to allow a 50-seat restaurant in a residential zone where it would not otherwise be permitted.
09/27/79	The Board of Zoning Adjustment approved a Variance (V-0066-79) to allow a 22 space parking lot in a residential zone for the restaurant on this subject site. Staff recommended approval.
04/28/83	The Board of Zoning Adjustment approved a Variance (V-0016-83) to allow an addition to extend to the north side property line where a five-foot setback was required and a patron parking lot in a residential zone for the restaurant on this subject site. Staff recommended approval.
11/15/84	The Board of Zoning Adjustment approved a Variance (V-0123-84) to allow an addition to extend to the north side property line where a five-foot setback was required, a patron parking lot in a residential zone, and 46 parking spaces where 55 were required for the restaurant on this subject site. Staff recommended approval.
07/25/85	The Board of Zoning Adjustment approved a Variance (V-0050-85) to allow a 20 square foot illuminated wall sign and two 2 square foot directional signs where only a single 2 square foot non-illuminated sign was permitted for the restaurant on this subject site. Staff recommended approval.
03/22/07	<a href="#">The Planning Commission recommended approval of companion item ZON-19616 and denial of SDR-19614 concurrently with this application.</a>  <a href="#">The Planning Commission voted 6-1/sd to recommend APPROVAL (PC Agenda Item #29/rts).</a>

<b><i>Related Building Permits/Business Licenses</i></b>	
07/06/93	A business license for a L16 (Tavern - a tavern license authorizes the sale of alcoholic beverages for consumption on the premises and the retailing of alcoholic beverages in original sealed or corked containers for consumption off the premises. In brief, this is a bar license and a package liquor license) category license was re-classified from a L04 category license (L04-00209) by the Department of Finance and Business Services. This license (L16-00150) was subsequently issued by Business Services on 01/03/02 with no apparent Planning and Development review.
02/06/97	A business license for a R09 (Restaurant: Seating 45 or more - an establishment providing preparation and retail sale of food & beverages, including cafes, coffee shops, sandwich shops, ice cream parlors, fast food take-out (i.e. pizza) and similar uses) category license was re-classified from a R07 category license (R07-00222) by the Department of Finance and Business Services. This license (R09-00767) was subsequently issued by Business Services on 01/03/02 with no apparent Planning and Development review.
12/27/00	A business license for an A01 (Administrative Office Space - an office location in which specific administrative functions of a business are conducted apart from the primary business location) category license was processed in by the Department of Finance and Business Services. This license (A01-01106) was issued by Business Services on 01/04/01 with no apparent Planning and Development review. This license has been marked out of business as of 10/21/05.
<b><i>Pre-Application Meeting</i></b>	
01/11/07	A pre-application meeting was held and elements of this application were discussed. Submittal requirements were discussed.
<b><i>Neighborhood Meeting</i></b>	
A neighborhood meeting is not required nor was one held.	

<b><i>Details of Application Request</i></b>	
<b><i>Site Area</i></b>	
Gross Acres	0.33

<b>Surrounding Property</b>	<b>Existing Land Use</b>	<b>Planned Land Use</b>	<b>Existing Zoning</b>
Subject Property	Restaurant, 2000 sq. ft. or more (without Drive-Through) and Liquor Establishment (Tavern)	C (Commercial)	R-4 (High Density Residential)

North	Office, Other Than Listed	C (Commercial)	P-R (Professional Office and Parking)
South	Office, Other Than Listed	C (Commercial)	C-1 (Limited Commercial)
East	Office, Other Than Listed	C (Commercial)	R3 (Medium Density Residential) under Resolution of Intent to C-1 (Limited Commercial)
West	Government Facility	PF (Public Facility)	C-2 (General Commercial)

<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
<b>Special Area Plan</b>			
Redevelopment Plan Area	X		Y
<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
<b>Trails</b>		X	N/A
<b>Rural Preservation Overlay District</b>		X	N/A
<b>Development Impact Notification Assessment</b>		X	N/A
<b>Project of Regional Significance</b>		X	N/A

## DEVELOPMENT STANDARDS

*Pursuant to Title 19.10, the following parking standards apply:*

Parking Requirement							
Use	Gross Floor Area or Number of Units	Required		Provided		Compliance	
		Parking Ratio	Parking		Parking		
			Regular	Handi-capped	Regular	Handi-capped	
Restaurant, 2000 sq. ft. or more (without Drive-Through) and Liquor Establishment (Tavern)	3,000 SF Seating/Waiting Area 2,246 SF BOH	1 Space / 50 SF of Seating/Waiting Area and 1 Space / 200 SF of total remaining GFA	69 Spaces	3 Spaces	11 Spaces	0* Spaces	N
TOTAL (including handicap)	5,246 SF		72 Spaces		11 Spaces		N**

Percent Deviation				≈ 84.72% Reduction	
Loading Spaces	5,246 SF	1 Space @ < 10,000 SF	1 Space	1 Space	Y

- \* A condition has been added that if approved the applicant must provide a revised site plan that depicts a van accessible handicap parking space per Title 19.10.010.
- \*\* If approved this Variance would allow 11 parking spaces where 72 parking spaces are the minimum required.

<b><i>Comparison of the Parking Approvals for this Site Over Time</i></b>				
	<b><i>Previously Approved</i></b>			<b><i>Proposed</i></b>
	<b><i>V-0078-78</i></b>	<b><i>V-0066-79</i></b>	<b><i>V-0123-84</i></b>	<b><i>VAR-20139</i></b>
Parking Required	Not Specified	25 Spaces	55 Spaces	72 Spaces
Parking Allowed	Tandem Parking w/ Valet During all Bus. Hrs.	24 Spaces	46 Spaces	11 Spaces
Percent Deviation	n/a	4.00% Reduction	≈ 16.36% Reduction	≈ 84.72% Reduction

## ANALYSIS

The subject site is located on the Southeast Sector Map of the General Plan. The site is designated as C (Commercial) on the Redevelopment Plan Area Map of the General Plan. This category allows for commercial uses that are normally allowed within the O (Office), SC (Service Commercial), and GC (General Commercial) Master Plan land use categories. The existing building is currently used for a restaurant with a tavern license and is in compliance with the C (Commercial) designation.

The existing R-4 (High Density Residential) zoning is not compatible with the existing use; however, a Site Development Plan Review (V-0016-83) permitted this variance from code. To bring the zoning into compliance with the General Plan and the existing restaurant use a concurrent Rezoning (ZON-19616) request is slated to be heard. The proposed C-1 (Limited Commercial) zoning district is intended to provide most retail shopping and personal services. The use established at this location is permissible in a C-1 (Limited Commercial) zoning district which is compatible with the C (Commercial) General Plan designation. Staff is recommending approval of the companion rezoning (ZON-19616) request as it will allow this site to be brought into conformance with the General Plan.

The site encompasses two parcels with existing buildings built across the lot lines. Additionally, should the parcels in the future become separate sites the site will be placed out of conformance with development standards for the C-1 (Limited Commercial) zoning district. For this reason a condition has been added to the Site Development Plan Review (SDR-19614) that prior to the issuance of any building or grading permits that a reversionary parcel map or administrative joining consolidating the parcels be recorded.

The expansion of the restaurant to add 342 square feet of storage space will be heard as a major amendment to an approved site development plan review (V-0016-83). The updated site development plan review (SDR-19614) is being heard concurrently with this variance. Staff is recommending denial on the site development plan review due to the extent of the proposed parking standard deviation.

The expansion of the building along with the current use calculations brings the required parking up to 72 parking spaces. In the most recent variance (V-0123-84) approval the parking was allowed at 46 spaces where 55 had been required, an approximate 16.36 percent reduction. The submitted site plan indicates 11 spaces will be provided, with no handicap spaces depicted. A condition has been added to the Site Development Plan Review (SDR-19614) that a revised site plan depicting at least one van accessible space is provided to and approved by the Planning and Development Department prior to the issuance of any building permits. This variance request constitutes an approximate 84.72 percent reduction in the number of required parking spaces and if approved would grant relief from the city standards. The great reduction in parking is partly due to the removal of the secondary parking location that was approved east of the alleyway from the current parking lot. Staff is recommending denial on the variance due to the self-imposed hardship generated by the project exceeding the capacity of the site and scope of the earlier approvals for this site.

## **FINDINGS**

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.18.070L states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships

upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by exceeding the capacity of the site without continuing the alternative parking that had been previously approved. The provision of additional parking spaces or a reduction in the intensity of the uses on-site would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

**NEIGHBORHOOD ASSOCIATIONS NOTIFIED** 17

**ASSEMBLY DISTRICT** 9

**SENATE DISTRICT** 3

**NOTICES MAILED** 94 by City Clerk

**APPROVALS** 0

**PROTESTS** 0